App. F. IX-4

35

192

File No. 5-35

Previous References (Law)

Serial Nos. 1 — 4

PRESERVED

Later References
Law 5-35-S#6
S.O. 754-37-1

General and Revenue Secretariat.

Serial Nos. four

Part B for Sepr 5

SUBJECT

Authorising the agents at Bombay Messrs. M.A.T. Acharya & Co. to launch the Cr. Case against — one H.P. Shaw of Bombay under Secs. 482, 483, 485 and 486. I.P.C.

---

(1) To

The Dep. of ~~Ind~~ Sandal Oil Factory, Compr

No-P S/5-5 of 25-7-35

Sanctions.

M. Abdulla 7-10-35

S.G. STRY ESQ., B.A., M.Sc.,
F.C.S.,
Deputy Director.

ADDRESS FOR TELEGRAMS:
SANDAL
BANGALORE
CODE USED: "BENTLEY'S"

GOVERNMENT OF MYSORE
SANDALWOOD OIL FACTORY

Bangalore, 29th June, 1935.

Law 5-35-1

No. 4447
Enc. 3.

Dear Mr. Jaya Rao,

In continuation of my personal discussion with you about three or four days back, in regard to the seizure of certain imitation Sandalwood Oil tins, by the Bombay C.I.D., I send you enclosed, copy of letter dated 25th June, 1935, received from our Bombay Agents, Messrs. M.A.T. Acharya & Co., Bangalore City, together with a cutting from the Times of India dated 24th June, 1935.

For your ready reference, I send enclosed, a copy of the note containing the terms under which Messrs. M.A.T. Acharya & Co., have been recommended to Government for continuing as our Agents for a period of two years with effect from 23rd July, 1934. Orders of Government have not been issued as yet, but all the same the firm is being treated and are working as our agents.

Yours sincerely,

N.R. Jaya Rao, Esq., M.A., LL.B.,
Assistant Secretary to the
Government of Mysore,
Law Section, Bangalore.

MG/

Letter to prosecute intended Accused

2) The main points requiring proof are under sec 482 I.P.C.

1) That the Complainant had a right to a trade mark

2) That the trade mark of the accused was similar to it

3) That it was marked or used in a manner reasonably calculated to cause it to be believed that the goods or receptacle so marked are the manufacture of the prosecutor

The third part mentioned above is the essence of the Crime and it depends upon a variety of Circumstances. Also full powers of the Case are not presented to examine this part in detail.

3) It is pointed out that the police informed Messrs. M. A. T. Acharya that it is not a Criminal Case and only a Civil Suit would lie.

The infringement of one's trade mark gives rise to a dual remedy which may be enforced either by a prosecution under I.P.C. or by a Civil Suit for injunction and damages.

A prosecution for an offence under sec 482 I.P.C. has to be instituted within 3 yrs of the Commission of the offence or 1 yr of its discovery whichever period first expires.

4) The offence is non Cognizable bailable and Compoundable with permission of the Ct.

GENERAL DEPARTMENT 2 JULY 1935 664

and thence by the presidency Magte or Magte of the 2nd or 4th class

5) The Complaint may be filed by the Agent at Bombay on behalf of the Govt. of Mysore in which case sanction of Govt seems to be necessary.

JSD 1/7

6) With the materials now furnished it is difficult to say whether an offence under Sec 482 I.P.C is made out in this case. The question mainly depends on a comparison of the articles seized with similar ones of the Govt factory. It is therefore best for the factory to consult some leading Counsel at Bombay and take such further action as may be advised in the matter

Yes Sey
Dev Sey

RNE 2/7/35
Hm 2/7
RNE 2/7

7) The steps advocated at 6 will cost a good deal of money and we may fail on any small point that the labels were not exactly similar. We do not know what else the accused [illegible] fraudulent steps to be going on. In any case the police action has stopped this. The position may be watched and action might be taken elsewhere if there be a recrudescence of this evil.

2 JULY 1935 No. 85

NOTE—Contn. Sheet.

S.O.7 Hm 2.7.

8) What is the proposal the Dir [illegible]

RNE 2/7

3/7

File No. of 193

General and Revenue Secretariat

9) Forwarded with compliments to the Director of Sandal oil factories for furnishing an answer to the member's query above.

U.O. No. P2/35 dated 4th July 35

M Yoganarasimhan for Secretary 3-7-35

142/10th. 10.7.35

OFFICE OF THE FIRST MEMBER (F. & REVENUE) 10-JULY-1935 No. 291

6) We shall have to proceed against the party in Bombay. Soon after the file was received in this office I sent a wire to the Director of Ind to Bombay (he was en route to Simla) and the Director has informed the representative of messrs mat Acharya that we should proceed against the culprit. We shall have to give a power of attorney to messrs mat acharya & co. Two letters from them are submitted in original.

4) If we should decide to take legal action it is suggested for consideration that the case may be entrusted to Mr. S. Narayaniah, B.A. LL.B., Advocate, A.33. Third floor, Tarabaug Estate, Charni Road, Bombay 4. He is a Mysorean.

5) It is learnt from newspapers that other parties aggrieved have filed suits against Shaw, (the culprit). It may be indicated whether it should be a Civil case or a Criminal case the decision of the Courts that a Criminal case will be effective & needs prompt in its results.

1st Member 10-7-35

13) The matter was discussed by us 10/7 MMN 10.7

Law Mem 10/7

Law File No of 1934.

14) As already pointed out in para 3 supra the offence gives rise to a dual remedy which may be enforced either by a prosecution under D.P.E. or by a Civil Suit for damages. The directions points are that the agents at Bombay prefer to launch a Criminal Case.

Submitted for orders with reference to Hamid's query in para 8 supra.

ISD 11/7

15) Before it is decided to take legal action in the matter, it is better for the agents to consult the advocate at Bombay who will also have to furnish the necessary draft of the power of attorney required.

16) As regards the question whether Civil or Criminal action is better in the case, I am of opinion that Criminal action may be taken in the first instance ~~may be dropped~~ if the advocate at Bombay is of opinion that a Criminal offence can be made out

Yes Secy MM 11/7

MM 11.7.

~~Yes please~~ ~~Let them know~~ MM 11/7

17) Sir Maffey informed and dealt

OFFICE OF THE FIRST MEMBER OF COUNCIL 11 JULY 1935 No. 355

NOTE—Contn. Sheet.

8) Dft Sub ...

To,

The Dist S.P.

C.P. 306 A. 15.7 enclosed

that the accused may be taken in the

first instance of the Addl. Dist

S.P. of the

made out

From,

The Dist S.P.

No 222 dt ... forwarding a

Copy of the letter received from

Messrs M.A. Aelawala & Co. and requesting

orders of Govt to enable the agents

& lawyers the Govt Sprinting Press Shan

of the M.A. Aelawala & Co. report that the Addl

at Bombay (Dist. Magistrate) is absent to file

Complaints under Secs. 482 B, 485 and 486 I

Sub Sec 2 of S.P. Sanctioning for orders with re

Letters 15-7-

Issued

Marked & Returned.

General

23/1/7

Dist Secy.

T. D. Mehta

Copy of letter dated 25th June, 1935, from Messrs. M.A.T. Acharya & Co., Bangalore City, to the Director, Sandalwood Oil Factory in Mysore, Bangalore.

We have received a telegram from Bombay and also a confirmatory letter, the telegram reading as follows:-

"Bombay C.I.D. seized our imitation Sandal Oil tins, labels, block, seal, Shaw under arrest inform Director see letter"

The letter reads as follows:-

"I received today information from C.I.D. Office that they have seized sandalwood oil tins, label, block, etc, just like our Sandalwood Oil tins captured from H.P. Shah, Zanaswady, Bombay, and he is how under police custody. Today at once I had gone to the C.I.D. Office, (Sergt. Gibbs, General Branch, C.I.D., Police Commissioner Office, Bombay,). I have shown them our Government packed tins. I have also inspected the imitation sandal oil tins, except wax seal. There is no difference in our tins and his tins. Even in the wax seal, there is only a slight difference. The public cannot find that difference. The Police Officer informed me that they have seized the following goods from the party and asked me to report the matter to Government of Mysore or to the higher authorities. He also informed me that it is not a criminal case and it is only a civil case. We or the Government of Mysore must take action against him and they will give full evidence with the articles seized by them from the party. Kindly report the matter to the Director of Industries & Commerce, Bangalore. This is the best opportunity to take action against him and we want to publish the same in all the local papers. I don't know who is the party but I came to understand that he is a Gujarati. At C.I.D. Office I have seen several articles and posters seized by them just like ours, Alembic Products, Enos Fruit Salt labels, etc. Kindly consider the matter. Mr. Rudrappa or yourself, please go over here after the 24th of this month and take action against him. I have enclosed herewith cutting from Bombay Samachar for your information.

List of Articles:-

10 x 1 lb tins.
8 x 4 oz do
246 x 1 oz do
labels big and small, block and seal.

I have seen the oil also. It is 75% adulterated and waterish".

We are submitting you this information to enable us to let us have your instructions as to what action is necessary in this matter.

Recently there have been a number of imitations of our product in Bombay and there have also been instances where certain foreign medicines have been sold under imitation labels. Consequently we had given confidential and oral information to the Police Authorities that our oil is also sold under imitation labels and seal. We now find that the C.I.D. have now been able to trace this out and it is therefore necessary that some action will have to be taken by us in this matter. We leave it to you to decide what action is necessary. We will have, however, to urge that in the interest of factory sales, a definite quick action will have to be taken so that a stop may be put to

repetition of such cases. At the same time, there is tremendous advertisement value if we bring home to the public that genuine Mysore oil is duplicated and sold under spurious seals. If action is taken and the culprits brought to book, we will be in a position to advertise widely in the papers warning the public and this will result in increased sale of our product. Also this will prevent further imitations which will naturally reflect to our own advantage. we therefore request you to kindly let us have immediate instructions in this matter.

Deputy Director
of Industries and Comme
For Director, Sandalwood Oil Factory.

The terms recommended under which Messrs. M.A,T. Acharya & Co., are to be appointed as sole selling Agents for a period of two years in Southern India, Bombay Presidency and Burma, commencing from 23rd July 1934, are as follows:-

---

(1) That they should sell a minimum quantity of 5000 lbs a year in their Agency Territory, of which a minimum quantity of 1000 lbs shall be sold in Burma.

(2) That the Factory may remove Burma from their Agency Territory whenever sales in that territory are not satisfactory.

(3) They should agree in the event of their failing in the above guarantee to purchase the balance quantities to make up the total quantities at the end of each year, unless the Director waives the right to this being done on account of special circumstances.

(4) They should sell oil to their customers at the rates noted in the schedule approved by the Government from time to time, except in cases where for special reasons such as credit payments by instalments, deliveries at buyers' factories or godowns, the agents arrange special rates to cover risks and expenses incurred. Such deviations with reasons should be reported to the Director.

(5) All enquiries of Sandalwood Oil received from the Agency territory will be referred to the Agents for disposal. But when any customer in the Agency territory applies for the oil direct, his indent will be complied with and the fact will immediately be intimated to the Agents to enable them to secure further custom from them.

(6) That the Agents will be given a commission of 3 annas per lb of oil sold to them and that a further commission of 1 anna per lb on the entire quantity, if the guaranteed quantity is purchased during each year.

(7) The Agents shall not export or book orders for Sandalwood Oil outside their Agency Territory where Government have accredited Agents, and shall take necessary precautions against their customers or agents doing so.

(8) The Agents shall sell the Sandalwood Oil in original containers supplied by Government and they shall not open the containers or alter or remove or tamper with the marks or numbers on the said containers. Sandalwood Oil for retail sales shall be supplied in Aluminium containers by Government. The Agents shall bear the actual cost of these containers.

(9) The Agents shall spend Rs 500/- each year towards advertisement and propaganda and furnish information at the end of each year to the Director regarding the expenditure so incurred by them.

(10)The Agents shall not, during the continuance of the Agency hereby constituted, deal in Sandalwood Oil from any source except the Mysore Government Factory or do anything that may prevent the sale of the Sandalwood Oil supplied by the Government or interfere with the development of the sale thereof.

(11) The Agents shall not also engage or be interested either directly or indirectly as principal,

agent or servant in any other business connected with the Sandalwood Oil and shall not compete or interfere with the sale of oil supplied by the Government or in any manner either on their own account or on behalf of any other person, whomsoever.

(12) That the Agents will not be entitled to any commission on sales made to Mysore Government Institutions.

(13) That the Agents should always maintain a running stock of 100 lbs to meet the needs of their customers

14) The Agents shall not assign the benefit of this agreement without the consent in writing of Government previously.

(15) That the Agents will be supplied oil against payment in advance at rates to be fixed by the Government from time to time, or the Railway receipt shall be sent through the Government Bankers for collection.

Deputy Director
of Industries and Commerce,
For Director, Sandalwood Oil Factory.

SPURIOUS DRUGS SEIZED

Three Arrests in Bombay

The widespread activities of a gang engaged in the manufacture and sale of spurious drugs in Bombay, it is believed, will receive a setback, with the arrest of three persons and the seizure of a large quantity of spurious drugs by the Crime Branch of the Bombay C.I.D.

After unremitting efforts the Bombay C. I. D. succeeded in tracing a number of shops, where, it was suspected, the spurious drugs were being prepared, and raided them.

It is believed that a very large portion of the stuff was being exported from Bombay to up country places for sale at rates very much below the market rates of the genuine articles.

Only the other day in convicting a man for selling spurious drugs, a Bombay Magistrate remarked that such a trade was a "pitiless exploitation of not only well-known drugs but of the sick and the injured."

Among the spurious drugs seized by the C. I. D. were imitations of a well-known paraffin oil, various tinctures, sandalwood oil, a famous ague specific and several preparations of a local chemist firm.

LABELS SEIZED

The police have also seized labels, printed material, cardboard boxes, metal discs, seals and lead blocks used for packing the spurious material.

The drugs seized by the police have been found to be spurious by the Bombay agents of the various medicines who took inspection of them at the police headquarters.

The stuff is packed with such extraordinary care that it is difficult to distinguish it from the genuine medicines. The containers are of the same colour and size and even the bottles closely resemble the genuine ones.

One of the three arrested men has been enlarged on bail and further inquiries are in progress.

5

MENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 13th July 1935

No. /

15

From

ry to the Government of His Highness the Maharaja of Mysore.

To

Sandalwood Oil Factory in Mysore,
Bangalore.

Sir,

S. G. Sastry's D. O. No.4447 dated 29th
Jun nt unofficial note No.142 dated 10th July
193 to be taken against H. P. Shaw in Bombay
fro n sandalwood oil tins were seized recently
by am directed to state that before it is
dec on in the matter, it is better for the agents to consult the Advocate at Bombay who will also have to furnish the necessary draft of the power of attorney required.

As regards the question whether Civil or Criminal action is better in the case, Government are adviced that criminal action may be taken in the first instance, if the Advocate at Bombay is of opinion after a study of the materials, that a criminal offence can be made out in the case.

The two letters from Messrs M. A. T. Acharya sent with your un-official note are herewith returned.

I have the honour to be,

Sir,

Your most obedient servant,

for General Secretary to Government.

TSD

Appendix F G—1]

SUBJECT .....

.....

.....

Section Law

File No. 5-35

Serial No. 2

No. P-306/Sec 2

To The Dor S.O.9.

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the 193

Date of issue ..... dated

Signed by .....

Sir,

With reference to the S.S. Safety D.O. no. nil dated 29.6.35 regarding what action is to be taken against H.P. Shaw in Bombay from whom seizure of certain imitation Sandal wood oil & tins were seized recently by the Bombay C.9.3 I am directed to state that before it is decided to take legal action in the matter it is better for the agents to Consult the advocate at Bombay who will also have to furnish the necessary draft of the power of attorney required.

As regards the question

List of enclosures .....

Copied by .....

Examined by.....

whether Civil or Criminal action

is better in the case for which are advised

that Criminal action may be

taken in the first instance the

advocate at Bombay is of opinion

upon a study of the materials that

a Criminal offence can be made out in the case

Necessary forcible action in

the matter may be taken accordingly

and the result intimated for the

guidance of further course.

Two letters from

He ~~first~~ ~~Communications~~ ~~Dated~~

received with your unofficial note

of Messrs. M.A Acharya & Co

herewith returned

Land Rev

13/7 for favour of see

13/7

Tel. Address :— "Sandal Bangalore"

SANDALWOOD OIL FACTORY

Bangalore, 22nd July, *193* 5.

Law 5-35-3

No. 272/2 Immediate.

FROM S. ABDUL WAJID ESQ., B.A.,
~~XXXX.XXXXXXXXXXXXXXXXXXXXXXXXXX~~

DIRECTOR, SANDALWOOD OIL FACTORY IN MYSORE,
BANGALORI

To

GENERAL SECRETARIAT 22 JUL 1935

The General Secretary to the Government of Mysore,
Bangalore.

Sir,

Refce:- Your letter No.P.306 (Encl:2) / Law 5-35-2 dated 13th/15th July, 1935.

Proposed Criminal Suit against H.P. Shaw in Bombay.

I have the honour to enclose copy of the letter from our agents, Messrs. M.A.T. Acharya & Co., in connection with the above matter, and request that orders of Government may kindly be obtained early to authorise the Agents to launch the case against H.P. Shaw.

I have the honour to be,

Sir,

Your most obedient servant,

Abdul Wajid.

Director.

Copy of letter dated 18th July, 1935, from The Mysore Products, 191 Princess Street, Bombay, to the Director, Sandalwood Oil Factory, Bangalore.

We beg to acknowledge with thanks the copy of your letter addressed to our Bangalore Office regarding the institution of criminal proceedings for infringement of our Sandalwood Oil trade marks. As per your instructions contained in the above letter, we have consulted our advocate Mr. S. Narayanaiah after a conference with the investigating police officer. He has advised us to file a complaint under the following sections:

482 I.P.C. For using false trade mark.

483 ... Counterfeiting a trade mark used by another.

485 ... Making or possession of any instrument for counterfeiting a trademark.

486 ... Selling goods marked with a counterfeit trade mark and for cheating under section 420 I.P.C. and abetment under 109

I.P.C. The evidence for offence under section 486 is not much but as these are presumably for sale to make easy money that will also be added. The other companies who have taken action have filed under the same sections. We have also enclosed the copy of the draft power of attorney given by our advocate which you please arrange to send it immediately. The complaint will be lodged on the receipt of the same. The investigating Police Officer is complaining about the delay in our taking the necessary action.

Deputy Director
of Industries and Commerce,
Per Director, Sandalwood Oil Factory.

GOVERNMENT OF MYSORE

ADDRESS FOR TELEGRAMS:
SANDAL
BANGALORE
CODE USED: "BENTLEY'S"

SANDALWOOD OIL FACTORY

Bangalore, 22nd July, 1935.

No.
Enc.

Know All Men by these presents that I, Director, Sandalwood Oil Factories, Government of Mysore, Mysore, have made, nominated, constituted, and appointed, and do hereby make, nominate, constitute and appoint, Messrs. The Mysore Products, Princess Street, Bombay, Sole Agents, for Mysore Government Sandalwood Oil for the whole of Bombay Presidency, as the attorneys for the Government of Mysore Sandalwood Oil Factories, for the purpose of instituting such proceedings, civil, criminal or both regarding the infringement of Government Trade-Marks, labels and other marks of trade used by the Government Sandalwood Oil Factories for indicating that the goods are their own manufacture, guaranteed according to the B.P., Am.P., standards.

And for the above purposes to appoint advocates, attorneys, counsel and generally to do execute such other acts and things as may be necessary for the purposes aforesaid as effectually as if done by me as representative of the Government Sandalwood Oil Factories, Mysore, and I ratify and confirm whatever the said attorneys shall do or purport to do in or about the premises by virtue of these presents.

Director,
Mysore Government
Sandal Oil Factory.

Attested.

- copy -

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

Read:-

Correspondence ending with the letter No.272/2 dated 22nd July 1935 from the Director of Sandal Oil Factory forwarding a copy of the letter from the Agents at Bombay Messrs. M.A.T.Acharya & Co., regarding the proposed criminal case against one H.P.Shaw of Bombay for offences under Sections 482, 483, 485 and 486 Indian Penal Code and soliciting sanction ~~fx~~ of Government to authorise the Agents at Bombay to launch the case against the said individual.

Order No. P.575-76 Law 5-35-4

Dated, Bangalore, 25th July 1935.

S a n c t i o n e d.

for General Secretary to Government.

TSD

To

The Director of Sandal Oil Factory in Mysore, Bangalore.

The Comptroller to Government.

ACH.4.

G. R. S. App. F VI—G 2]

SUBJECT .....

.....

.....

Diary. No of letter replied to .....

Section Law
File No. S-35
Serial No. 4

General and Revenue Secretariat

( )

the *193* .

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 25-7-35 193 .

Signed by H.V.R
I. R.D.J.R

Read— Correspondence ending with the letter no. 372/P dated 22-7-35 from the Deputy S.P.O. forwarding a Copy of a letter from the Agents at Bombay Messrs M.A.T. Acharya & Co re: the proposed Criminal Case against one H.C. Shaw of Bombay ~~Order thereon.—No~~. for offences under sections 408, 465, 468 and 486 I.P.C and soliciting sanction of Govt to authorise the Agents at Bombay to launch the Case against the said individual

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

order No P 575-76

Enclosed

The Deputy S.P.O. at
Campbell

Copy to Dep. Sec.

23/7

23/7